



DUVAL COUNTY PUBLIC SCHOOLS

Lesbian, Gay, Bi-sexual, Transgender and Questioning (LGBTQ) Support Guide

Every school, Every classroom, Every student, Every day



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Superintendent's Remarks

Regardless of their sexual orientation, gender identity or gender expression, every student should feel safe in every one of our schools every day. These are rights that are protected by our School Board policies and rights that affirm our commitment to mental health and academic wellness. Environments that are safe, welcoming and inclusive increase morale, motivation and learning for all students on our campuses.

Parents and caregivers send their children to school with the hope and expectation they will be free from harassment, bullying and discrimination. To that end, we have policies and procedures in place to protect our students from discrimination, harassment, sexual harassment or retaliation. We all have an experience of sexual orientation, gender identity and gender expression, and we all deserve to feel comfortable expressing those identities.

Still, local, regional and national surveys show that lesbian, gay, bisexual, transgender, and questioning (LGBTQ) students continually experience verbal and physical harassment, threats, and absenteeism as a result of lingering non-acceptance in schools, social circles, and in the broader community. Although progress has been made to bring attention to some of the negative outcomes for LGBTQ students, there is still room to grow.

That is why we are presenting the Duval County Public School's Lesbian, Gay, Bisexual, Transgender and Questioning Support Guide. This Guide will support our educational community in fulfilling the rights each of us has to be affirmed, protected, and respected. This Guide will also support the responsibility we have to be affirming, protective and respectful of our students.

Thank you for being an integral part of our commitment to excellence reflected in our commitment to the success of every student – wherever she may come from, however he identifies, whoever they want to be.

I. BACKGROUND AND PRINCIPLES

A. EXECUTIVE SUMMARY

This Guide is designed to implement efforts to make each District K-12 public school a safer place for *all* students – with emphasis on the often-targeted community of lesbian, gay, bisexual, transgender or questioning (LGBTQ) students. It further intends to improve the manner in which administrators implement existing federal, state, local laws and policies concerning harassment and discrimination. This Executive Summary is only a partial view; please read the Guide in its entirety.

This Guide is a critical tool at a critical time. All young people - including those who are LGBTQ - have the right to feel safe and secure in the schools they attend. Students who feel accepted at school are more highly motivated, engaged in learning, and committed to achieving the best possible education. Unfortunately, statistics suggest the continued harassment, threats, assaults and absenteeism of students who identify or are identified as LGBTQ.

Highlights of the Guide include:

- Statistics and Definitions
- Review of Federal, State and Local Laws and Policies Prohibiting Discrimination and Harassment
- Creating a Safe Environment for LGBTQ Students
- Guidelines for the Accommodation of Transgender Students
- Suggested Responses to Parental Concerns

B. MISSION STATEMENT

The mission of the District's LGBTQ Support Guide is to promote cultural competency by addressing the unique needs of the LGBTQ school community. Our vision is a safer and more productive learning environment for *all* students. In accordance with state, federal, local policies and laws, the District will continue to provide students, teachers, administrators, and community members the resources needed to make our schools as safe and inclusive as possible.

C. BACKGROUND

In 2008, section 1006.147, Florida Statutes was passed. This law prohibits bullying or harassment of any student or employee of a Florida public K-12 educational institution; further, it requires each school district to draft a local anti-bullying policy enumerating specific procedures and protected classes.

The District's Anti-Bullying Policy 10.20 includes sexual orientation, gender identity, and gender expression as classes protected against bullying. Additionally, the District's Non-Discrimination Policy 10.10 prohibits discrimination and harassment in our schools against students based on sexual orientation, gender identity and gender expression. Last, the District's Equity Policy 1.22 provides similar protections. This Guide is an extension of the principles upon which these policies are based.

II. STATISTICS AND DEFINITIONS

A. THE NECESSITY OF THE GUIDE

One cannot appreciate the need for this Guide without first reviewing statistics concerning the LGBTQ community in our schools. Several statistics include the following, which come to us courtesy of the Gay and Lesbian Student Education Network (GLSEN):

- In a 2017 survey of 23,001 students between the ages of 13 and 21, 87.3% of LGBTQ students experienced harassment or assault based on personal characteristics, including sexual orientation, gender expression, gender, religion, race and ethnicity and disability. Nearly two-thirds (59.5%) felt “unsafe” because of their sexual orientation. More than one-third of these students (34.8%), missed at least one entire day of school in the month preceding taking the survey because they felt unsafe or uncomfortable.
- Approximately 70% of LGBTQ students reported being “verbally harassed,” 29% reported being “physically harassed,” and 12.4% reported being “physically assaulted at school in the past year because of [their] sexual orientation.”
- Approximately 11% reported being “physically assaulted at school in the past year” because of their gender expression.
- Almost all of LGBTQ students (98.5%) heard “gay” used in a negative way (e.g., “that’s so gay”) at school; 70.0% heard these remarks often or frequently and 91.8% reported that they felt distressed because of this language. More than 95% heard other types of homophobic remarks; 60.3% heard this type of language often or frequently.
- Nearly two-thirds of students reported they felt unsafe in school because of the sexual orientation, and more than a third felt unsafe because of their gender expression.
- Approximately 4 in 10 students avoided gender-segregated spaces in school due to safety concerns (bathrooms: 42.7%; locker rooms: 40.6%).
- Over fifty percent (56.6%) of students reported hearing homophobic remarks from their teachers or other school staff, and 71.0% of students reported hearing negative remarks about gender expression from teachers or other school staff.
- Sixty percent (60.4%) of the students who did report an incident of harassment and assault said that school staff did nothing in response or told the student to ignore it.

In addition to the survey noted above, another resource posted by GLSEN concluded that the rates of attempted suicide for gay and lesbian adolescents and adults, depending on the survey, are two to six times greater than among the general comparable population.”¹

The District also participates in a national survey entitled the Youth Risk Behavior Survey (YRBS). The 2017 survey results provide the following responses from students:

- Over 1 in 5 students have been bullied because someone thought that they were lesbian, gay, or bisexual (LGB).
- Suicide risk behaviors were more common among LBG high-school students. In Duval County, close to 1 in 3 LGB students have attempted suicide compared to 1 in 6 heterosexual students.

- Almost 22% (21.5%) of students identify as lesbian, gay, bi-sexual, or unsure of their sexual orientation.

B. DEFINING “LGBTQ”

In order to understand this Guide and to support the LGBTQ community in our schools, it is necessary to become familiar with the terminology. The definitions below may be referred to when answering questions that may arise, so long as the definitions are modified for age-appropriateness. The definitions are set forth in Appendix 1.

III. KNOW THE LAW

The regulations and opinions concerning this matter are new and evolving. The following provides background concerning the federal, state, and local policies regarding this topic.

A. FEDERAL LAW

The 14th Amendment of the U.S. Constitution (Equal Protection)

The 14th Amendment guarantees all persons equal protection under the law. Public school officials may be held liable for violating LGBTQ students' constitutional rights, or not intervening in anti-LGBTQ harassment (which includes ignoring anti-LGBTQ harassment or treating it less seriously than other forms of harassment). If a public school official deliberately ignores anti-gay or anti-transgender peer abuse, or fails to apply anti-bullying protections on a nondiscriminatory basis, the official, and even the school district itself, may be held liable for violating students' constitutional rights.²

Title IX of the Education Amendment Acts of 1972

Title IX of the Education Amendment Acts of 1972 prohibits discrimination based on gender in education programs and activities that receive federal financial assistance. Importantly, in May of 2016, the U.S. Department of Justice and the U.S. Department of Education released joint guidance reaffirming Federal civil rights protections to transgender students (see Appendix 2 for the May 2016 Dear Colleague Letter). Complaints of harassment can be filed with the U.S. Department of Education, and the Office of Civil Rights has pursued actions against school districts. Title IX sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. Title VII of the 1964 Civil Rights Act prohibits sex discrimination in employment, and courts often use Title VII analysis in interpreting Title IX claims.

First Amendment of the U.S. Constitution

Providing for free speech, including expression of gender identity. Further discussion is set forth below in the context of dress code and similar matters.

IDEA and Section 504

If a student is identified as a special education student (whether under IDEA and/or Section 504 of the Rehabilitation Act), and files a complaint of discrimination or bullying, then the District's procedures to review the complaint must be implemented, including the District's review whether the student was denied his/her free appropriate public education (FAPE) that must be remedied.

² *Flores v. Morgan Hill Unified School Dist.*, 324 F.3d 1130, 1134-5 (9th Cir. 2003);² *Nabozny v Podlesny*, 92 F.3d 446, 458 (7th Cir. 1996) (\$962,000 in damages after a school failed to intervene in verbal and physical attacks on a student suspected to be gay). The *Flores* case is particularly noteworthy because the plaintiffs endured a litany of abuses: one boy was repeatedly beaten up by other male students and subjected to violent anti-gay slurs; a girl was subjected to repeated verbal attacks and had pornographic pictures of lesbians taped to her locker; another girl suspected to be gay was taunted with a phallic-shaped balloon in the presence of an adult monitor. When these incidents were reported to administrators, the students were either advised not to make a big deal out of them or, worse, the administrators participated in the harassment themselves ("Well if you're not gay, then why are you crying?"). It was ultimately held by the 9th Circuit Court of Appeals that if a school knows that anti-LGBTQ harassment is taking place, the school is obligated to take meaningful steps to end it and to protect the students. The case concluded in a \$1.1 million settlement to the plaintiffs.

The procedures include the convening of the student's IEP and/or section 504 team to formulate an appropriate resolution. Failure to investigate and take corrective action could subject the District to damages or federal or state investigations.

B. STATE LAW

Section 760.01, Florida Statutes

The general purpose of the Florida Civil Rights Act of 1992 is to secure for all individuals freedom from discrimination due to race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

Section 1000.05, Florida Statutes

Section 1000.05, Florida Statutes, prohibits discrimination against student and employees in the Florida K-20 public education system on the basis of race, ethnicity, national origin, gender, disability, or marital status. Florida state law does not currently prohibit discrimination on the basis of sexual orientation, gender identity, or gender expression. Local governments within Florida, however, are permitted to implement more inclusive regulations.

Section 1006.147, Florida Statutes³

Enacted in May 2008, the Jeffrey Johnston Stand Up for All Students Act created a statewide prohibition of the bullying or harassment of any student or employee of a public K-12 educational institution; whether at a school, on a school bus, or via electronic device.

The law requires each individual school district to implement a policy outlining the consequences of harassment; the consequences for a wrongful accusation of harassment; and the procedure for immediately notifying the parents of both the victim and the perpetrator of the alleged bullying or harassment. The statute leaves it up to the individual school districts to enumerate specific categories (i.e., race, disability, sexual orientation, etc.) for which bullying is specifically prohibited.

³ Jeffrey Johnston was a 15-year-old Cape Coral, FL, student who committed suicide after enduring more than two years of bullying. It began in seventh grade, when he and his girlfriend broke up. Some kids called him a stalker. Others made fun of his chapped lips and said he had herpes. His mother was a teacher in the same school Jeffrey attended. When Jeffrey started 8th grade, students at his school hacked into an online video game he'd spent the summer creating. They filled it with hateful messages. One of the students started an online journal where humiliating messages about Jeffrey were posted. One read: "Jeff is a faggot." Followed by, "He needs to die." After the video game incident, Jeffrey threatened to kill himself. His mother kept him out of school for two weeks. Jeffrey reported the bullying to the school. The principal warned the aggressors. He indicated he was powerless to do more because no school policy covered conduct in cyberspace. By Jeffrey's freshman year in high school, the aggressors were at another school. However, the taunts continued online. When he could not take it anymore, Jeffrey hanged himself in his closet using his book bag strap. His suicide note read, "I'll never get over eighth grade."

"A bully doesn't have to be eye-to-eye to bully someone. Sometimes he or she gets into cyberspace, and then there's no place to hide from their torment. With the keyboard as his weapon, the bully violated the sanctity of my home and murdered my child just as surely as if he had crawled through a broken window and choked the life from Jeff with his bare hands. It was not a death that was quick and merciful. It was carried out with likes, rumors and calculated cruelty portioned out day by day." Debbie Johnston, mother of Jeffrey Johnston

The law provides that “[d]istribution of safe schools funds to a school district... is contingent upon... the Department of Education’s approval of the school district’s bullying and harassment policy.”

Florida Department of Education Rule 6A-10.081 (Principles of Professional Conduct for the Education Profession in Florida)

Section 6A-10.081(1)(a) states the following:

The educator values the worth and dignity of every person, the pursuit of truth, devotion to excellence, acquisition of knowledge, and the nurture of democratic citizenship. Essential to the achievement of these standards are the freedom to learn and to teach and the guarantee of equal opportunity for all.

Section 6A-10.081(2)(a)7. goes on to state:

Obligation to the student requires that the individual... [s]hall not harass or discriminate against any student on the basis of race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, handicapping condition, sexual orientation, or social and family background and shall make reasonable effort to assure that each student is protected from harassment or discrimination.

Stated another way, the actions and speech of teachers and administrators should model inclusiveness and non-discrimination.

C. DISTRICT POLICIES

District policies specifically prohibit harassment and discrimination based on sexual orientation, gender identity, and gender expression, such as the Non-Discrimination Policy 10.10, the Anti-Bullying Policy 10.20, and the Equity Policy 1.22. District policies are available on the District’s website on the School Board webpage, in the Duval County School Board Policy Manual tab.

The District’s Policy 10.20 prohibits the bullying, harassment, cyberstalking, and cyberbullying of any student or employee on the basis of any one of the following protected categories: sex, race, color, religion, national origin, age, disability, marital status, social-economic background, ancestry/ethnicity, linguistic preference, political beliefs, social/family background, gender, gender identity, gender expression and sexual orientation. The policy characterizes “bullying” as:

...systematically and chronically inflicting physical hurt or psychological distress on one or more students or employees. [Bullying] is further defined as: unwanted, purposeful, and repeated written, verbal, nonverbal, electronic, or physical behavior, by a student or adult, that is severe or pervasive enough to create an intimidating, hostile, or offensive educational environment; cause discomfort or humiliation; or unreasonably interfere with the individual’s school performance or participation; and is often characterized by an imbalance of power.

To report bullying and harassment, call or text (904) 390-2255; see also the District’s Student Code of Conduct. For assistance in managing a bullying investigation, contact the Office of Equity and Inclusion at (904) 390-2181.

IV. CREATING A SAFE ENVIRONMENT FOR LGBTQ STUDENTS

The need for a united front on student safety issues is important to the District's work. Ways in which administrators can create a safer learning environment for LGBTQ students include:

- Intercepting anti-LGBTQ slurs;
- Supporting students who are navigating the delicate process of "coming out," while at the same time keeping information confidential (to preserve students' privacy rights); and
- Ensuring dress codes and social events (i.e., proms dances, graduations and yearbooks) accommodate the needs of the LGBTQ community.

In short, to the extent certain privileges are available to the "straight" community of students (for example, being able to take a significant other to the prom, or wearing a t-shirt with a non-disruptive political message), those same privileges must be extended to LGBTQ students. To do otherwise could constitute violation of a LGBTQ student's First Amendment right to freedom of expression. Court cases have held non-compliant public schools accountable for such infractions at a high cost.

A. ANTI-LGBTQ LANGUAGE

Statistics tell us that anti-LGBTQ slurs and bias toward gender-expansive youth abound in our schools, regardless of whether the target of the slur is actually gay, or just perceived to be gay. Here are some guidelines for intervening in anti-LGBTQ language, and note that these tips are useful in most situations to diffuse and correct bullying behavior of any type.

What Do You Say to "That's so Gay!"?

STOP IT: Keep it simple with quick responses. You could say:

- "We don't use gay as a put-down in this class."
- "It's not OK to say that's so gay."
- "It's not OK to use that phrase."
- "What did you mean by that?"
- "You may not have meant to be hurtful, but when you use the word gay to mean something is bad or stupid, it is hurtful."
- "Do you know why that comment is hurtful?"

If you have the time and opportunity to educate on the spot, do it. If you don't, be sure to make time later.

EDUCATE: Whether explained at the moment of the incident or shortly after, be absolutely clear with students that when they use the word "gay" as an insult, they are being disrespectful. Calling something or someone "gay" is hurtful not only to the target (who may or may not be gay) but also to others who may have parents, neighbors, friends or other family member(s) who are gay.

BE PROACTIVE: Create an environment of respect and caring for all students in your class and school. Establish clear school-wide and classroom policies against name-calling and hurtful teasing. If you have been hearing the phrase, "That's so gay!" at school, be explicit that rules against name-calling include this phrase and other anti-gay put-downs.

DON'T IGNORE IT: Ignoring name-calling and hurtful teasing allows it to continue and possibly get worse. If other students do not see action, they get the message there is nothing wrong with it. Harassment does not go away on its own.

DON'T BE AFRAID OF MAKING THE SITUATION WORSE: Almost any response is better than ignoring the situation. You may not know exactly what to say. However, you must stop the harassment. Taking action reaffirms limits. Interrupting name-calling is not always easy. Experience will help you to become more comfortable handling future situations. In addition, you can always go back to the student and say or do something else if you feel you did not respond effectively.

DON'T EXCUSE THE BEHAVIOR: Saying, "Josh doesn't really know what it means," or "Sarah was only joking," excuses hurtful behavior.

DON'T TRY TO JUDGE HOW UPSET THE TARGET IS: We have no way of knowing how a student is really feeling. Often, targets are embarrassed and pretend they were not offended or hurt. Saying "Michael didn't seem upset by Laura's remark" trivializes the child's feelings. It tells the harasser it is OK to make hurtful comments. It teaches both the child targeted and also anyone within hearing range they will not be protected from harassment.

DON'T WORRY ABOUT THE TABLES BEING TURNED: If you are worried a student will respond to your correction by saying something like, "What do you care... are YOU gay?" prepare a response in advance. An example of your response may be, "My own personal life is completely irrelevant here; bullying is forbidden at this school" or "Actually, I am – which has absolutely nothing to do with the fact that your comment is inappropriate." Note: Use your professional judgment and be in touch with what you personally are comfortable disclosing to your students.

B. "COMING OUT"

Some schools may try to silence students who are open about their sexual orientation or gender identity. Federal courts have found students have a Constitutional right to be "out" at school if they want to be.⁴

In the seminal case, *Tinker v. Des Moines*, the U.S. Supreme Court ruled that students don't "shed their constitutional rights to freedom of speech at the schoolhouse gate." The only time a school can restrict an individual student's free speech is when it causes significant disruption in the classroom or school. (*Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)). For example, a student disruptively standing up and yelling, "I'm gay!" in the middle of class would not be protected speech. On the other hand, a student talking with a friend at school about being gay between classes or at lunch is permitted.

⁴ See, e.g., *Sterling v. Borough of Minersville*, 232 F.3d. 190, 196 n.4 (3d Cir. 2000) (holding that information about one's sexual orientation is "intrinsically private"); *C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal 2005) (even a student who is out at school has the right to control who in their family knows about their LGBTQ status: "[t]he fact that [the student's sexual orientation] is not wholly private does not mean that an individual has no interest in limiting disclosure or dissemination of information").

Constitutionally protected rights to speech, assembly and expression means LGBTQ students have a right to be out if they choose. Not all students come out at the same time, at the same age, or in the same way.

- For many students, coming out happens in stages.
- Not all students are out in all areas of their lives. Some students may be out at school but not at home. Or out at home and in social settings, but not on their athletic team or church.

A student should never be “outed” without their input and permission (unless their gender identity or sexual orientation is directly related to medical/mental health care, threats of serious bodily injury, or is the cause or likely cause of abuse, abandonment or neglect). All efforts should be taken to keep a student’s identity confidential.

- Students should be advised of any disclosures of sexual orientation or gender identity they have not expressly permitted.
- Take steps to ensure if a student’s sexual orientation or gender identity is known or documented that the information is safe, confidential, and will not unfairly subject the student to ridicule or discrimination.

If a student comes out to school staff or educators, that is a sign of trust that should be respected. The student should be asked and counseled on when, how or if that information will be shared.

- Reaffirm the student’s identity.
- Show respect for trust shown in coming out to you.
- Ask if they have any concerns or fears related to their safety or well-being as a result of their identity.
- If you feel uncomfortable, uncertain or upset, be honest about that.
- Ask questions to show your support and interest in their well-being.
- Be an advocate.

1. TALKING TO STUDENTS

In our society, most people are presumed to be heterosexual. There is no need for a heterosexual person to make a statement to others that discloses his or her sexual orientation. Similarly, most people feel that their gender is aligned with their biological sex. They typically have no need to disclose their gender identity.

However, LGBTQ people have the right to decide when, and how to reveal to others their sexual orientation or gender identity (or whether they are questioning their orientation or identity). This is often a delicate and emotional process.

Unfortunately, LGBTQ youth may experience parental rejection and/or abuse because of their sexual orientation or gender identity. The degree to which teachers and administrators need to be sensitive about this issue, cannot be overstated.

If a Student Comes Out to You:

- Offer support.
- Be a role model of acceptance.

- Appreciate the student's courage.
- Listen, listen, and listen.
- Assure and respect confidentiality.
- Demonstrate understanding, acceptance and compassion.
- Be prepared to give a referral for resources and/or for emotional support.
- Remember the student has not changed.

What not to say:

- "I knew it!"
- "Are you sure? Are you confused?"
- "This is just a phase."
- "You just haven't found the right woman/man."
- "Shhhh, don't tell anyone."
- "You're too young to know."
- "You should come out to everyone and be honest."
- "You can't be gay; you've had relationships with people of the opposite sex."

In short, it is a compliment when a student trusts you enough to come out to you. It is up to you to prove yourself worthy of that trust. Barring extenuating circumstances in which you fear for the student's safety, value confidentiality above all else. If you desire additional support, please contact your school's administrator, or the District's Office of Equity and Inclusion at (904) 390-2181. A list of additional resources is set forth in Appendix 3.

2. TALKING TO PARENTS/GUARDIANS

As stated above, several federal courts have held the Constitution prohibits government officials from disclosing information about a person's gay, lesbian or bisexual orientation, except under limited circumstances. The expression of sexual orientation is an innately personal choice.⁵ Therefore, just as teachers and school administrators cannot discourage a student from being "out" at school, they also cannot encourage (or even force) a student to be "out" at home. It is up to the student, and the student alone, to decide where and when to be open about his or her LGBTQ status. Thus, care should be taken regarding incautious disclosures. And always remain aware of your legal duty to report suspicions of child abuse or neglect to the Department of Children and Families.

Occasionally, a parent may contact teachers, guidance counselors, or administrators to ask if their child has confided in them about his/her sexual orientation, or if it is suspected their child may be gay. With the very limited exception involving the imminent fear of physical harm, it is never appropriate to divulge the sexual orientation of a student to a parent. If a student's transgender status is set forth in the student's educational records, then pursuant FERPA, a parent may see that information. Thus, care should be taken regarding the recording of such status in the student's education records if there is a concern about the student's privacy or safety while home. It is a delicate line to balance the privacy interests of the student and the District's legal obligation to act in *loco parentis* (in the place of the parent). If you need assistance for a specific matter, please contact the Office of Equity and Inclusion at (904) 390-2181.

⁵ *Sterling v. Borough of Minersville*, 232 F.3d. 190, 196 n.4 (3d Cir. 2000); *C.N. v. Wolf*, 410 F. Supp. 2d 894, 903 (C.D. Cal. 2005)]

If a teacher, guidance counselor, or administrator is asked these questions, an appropriate response to the parent may be: “Based on policy and federal guidelines, I cannot divulge whether your child and I have had any such confidential conversations, as even students are legally afforded rights of privacy.” You could further suggest the parent speak directly to your child; or suggest the parent contact the local PFLAG (Parents, Families and Friends of Lesbians and Gays) chapter (where you do not have to be certain of your child’s sexual orientation to ask questions or attend a meeting).

IMPORTANT: It is imperative that these guidelines regarding confidentiality be kept clearly in mind when communicating with parents or guardians about bullying or other misconduct. To the extent that administrators must relay the exact wording of an altercation due to reporting requirements, you can be careful to neutralize potentially incriminating language that was used. For example, if a student suspected to be gay is called a “faggot” by an aggressor, the parent might be told, “Mrs. Smith, your son was involved in an altercation today as the result of being bullied by another student who called him a ‘faggot.’ Unfortunately, this term is frequently used by students as a generalized put-down.” Failure to practice discretion regarding language could place a student in a hostile, dangerous, or even life-threatening, environment. Please contact the Office of Equity and Inclusion at (904) 390-2181 before contacting parents or guardians if you have any questions or concerns about this issue.

C. INCLUSIVE LANGUAGE AND ACTIVITIES

Become aware of the language you use. It is only natural that our own experiences shape the language we use. However, sometimes without even realizing it, our words convey messages about the world that may not always be fair or accurate. For example, it is common parlance to refer to student’s parents as “Your mom and dad.” In fact, not every student is being raised by a mother and a father. Some students are being raised by a single parent; by a grandparent; and still others by two moms or two dads. By perpetuating the stereotype of a traditional nuclear family-or taking it as a given that all boys will grow up to marry girls (and vice versa) – we inadvertently alienate our students who have non-traditional families, or are themselves LGBTQ. Simply becoming aware of the presumptions that affect our word choices is the first step in cultivating a more inclusive classroom experience.

Become more aware of the way that you support gender stereotypes in your expectations of students and their work and intervene when you hear students making gender-based assumptions. This might be one of the most difficult tips because bias in our expectations usually goes unobserved.

Consider different ways of grouping and organizing activities other than “boys here, girls there” or “boys do this, girls do that.” An example includes organizing students by birthday month.

D. GAY-STRAIGHT ALLIANCES

Gay-Straight Alliances (GSAs) are student clubs, similar to clubs such as the Drama Club or Key Club, by allowing students with a common interest to get together and have events or discussions about that interest. GSAs are made up of students of any sexual orientation, and many GSA members are straight-identifying youth. GSAs can be support groups, or educational or civic clubs dedicated to making the school and community a safer space for all individuals. Under the Federal Equal Access Act (20 U.S.C. §§ 4071-74), a public school permitting any non-curricular club (meaning, a club that does not directly relate to a class taught at school) must also allow students to form a GSA. In addition, under the Equal Access Act, the school must treat the GSA

the same as it does any other non-curricular club in terms of access to facilities, resources, and opportunities to advertise. For more information, see Appendix 4 for Secretary Arne Duncan's June 2011 Key Policy letter.

Research from the University of Victoria has shown that suicidal ideation and suicide attempts decrease among LGB youth and their heterosexual peers when a GSA is present. <https://journals.uvic.ca/index.php/ijcyfs/article/view/12856>.

Parents may have questions about a GSA. Answer parents' questions as honestly as possible, but be exceedingly careful not to accidentally "out" a student. Remember a student could be out at school, but NOT out at home. Furthermore, students have a legal right to privacy and confidentiality when it comes to their sexual orientation. Remind parents the club is a gay and straight alliance. Therefore, a student is not making any statement about his or her orientation or identity simply by participating in the club.

For additional information about how to start, or supervise a GSA, contact the Wellness Department at (904) 390-2469.

E. PROMS / DANCES

Federal court cases have held that any policy or action excluding same-sex couples from proms and dances, as well as any policy adopted as a pretext for such discrimination, violates students' rights to free expression and association as guaranteed by the First Amendment to the United States Constitution.⁶

Schools may set general dress standards for prom, such as the requirement of formal attire. A school may not dictate that only biological males may wear tuxedos, and only biological females may wear dresses.⁷

F. DRESS CODES

Some students may want to wear gender-nonconforming attire to school, to the prom, to graduation ceremonies, or in yearbook photographs. Schools are permitted to have a dress code, but it must be enforced equally among all students, irrespective of sexual orientation, gender expression, or gender identity.⁸ Remember, in order for clothes to meet this standard, the disruption must be significant and objectively provable to other people. Clothing cannot be qualified as "significantly disruptive" simply because a teacher or administrator personally considers the message to be offensive.

Other students may want to wear T-shirts and accessories expressing a pro-LGBTQ message. Again, restrictions on political messages are permissible as long as they are enforced uniformly among all students and viewpoints. For example, in Holmes County, Florida, the school board banned students from wearing pro-gay slogans such as "I Support My Gay Friends" and "Gay?

⁶ See, i.e., *Fricke v. Lynch*, 491 F. Supp. 381, 382 (D.R.I. 1980). See also, *McMillen v. Itawamba County School Districts*, 702 F. Supp. 2d 699 (N.D. Miss. 2010) (holding the student's First Amendment rights were violated when the school cancelled prom because of the student's desire to bring a same-sex date).

⁷ See, i.e., *Logan v. Gary Cmty. Sch. Corp.*, 2008 U.S. Dist. LEXIS 79390, **10-11 (N.D. Ind. Sept. 25, 2008).

⁸ *Doe v. Yunits*, No. 00-1060-A, 2000 Mass. Super. LEXIS 491 (Mass. Super. Ct. Oct. 11, 2000) (holding that a student has a free speech right to express their gender identity through clothing as long as it is not significantly disruptive).

Fine By Me.” A student sued the school and won; the court approved the parties’ settlement agreement whereby the district paid \$325,000 for the student’s legal fees and expenses⁹

G. SUMMARY

The theme in the creation of a safe environment for LGBTQ students is equal protection. For example, if you do not allow insults based on racial minority groups, then do not allow insults based on sexual minority groups. If you allow after-school clubs, then allow GSAs. If straight students can take their significant other to the prom, then gay students can take their significant others to the prom. When faced with a difficult question from or about an LGBTQ student, ask yourself if your answer would be the same if it were a straight student.

⁹ See, *Gillman v. School Board for Holmes County, Florida*, 567 F. Supp. 2d 1359 (N.D. Fla. 2008) (the messages on the clothing was not vulgar or obscene, but rather an expression of tolerance and fairness; the court found that the school district acted in violation of the student’s free speech rights).

V. GUIDELINES FOR TRANSGENDER STUDENTS

The dynamics concerning transgender youth in schools are complicated. As societal attitudes evolve, the District must balance competing interests, such as requests for accommodations, and concerns of students and parents for privacy and safety. In this evolving legal area, the District must provide educational access and a safe learning environment for *all* students free from discrimination and harassment. District officials must act on any complaint of discrimination, harassment, or bullying by a student (whether or not transgender) with the same diligence, follow-through, and resolution in each instance. Contact the Office of Equity and Inclusion at (904) 390-2181 for additional information and assistance in developing a plan for a transgender student.

Transgender and gender-expansive students are in our schools. Furthermore, numerous studies suggest that bullying, harassment, and discrimination faced by transgender and gender-nonconforming students are often pervasive. Transgender students (meaning, students who feel their innate sense of self and gender does not match their sex assigned at birth; i.e., “a boy trapped in a girl’s body” and vice-versa), have a set of unique challenges requiring unique accommodations. Among other considerations, these students should be permitted to:

- Be addressed by the name/gender pronoun with which they are comfortable. Some examples include: He/She; They/Them; or Ze/Zir. This list is not meant to be exhaustive.
- Be permitted to wear clothing that expresses their consistently asserted gender identity; students have free speech rights to express their gender identity through clothes and accessories, so long as they do not create a significant disruption to the class/school.
- Develop a plan for restroom and/or locker room use corresponding to their consistently asserted gender identity (at a minimum, not be forced to use the restroom and/or locker room that corresponds with their biological sex).
- Play on the sports team corresponding with their consistently asserted gender identity.

Transgender students are disproportionately targeted for harassment and violence both at home and at school. Transgender individuals should be treated with compassion and sensitivity.

In June, 2011, Secretary Duncan issued his key policy letter reaffirming federal civil rights protections to transgender students, and on May 13, 2016, the U.S. Department of Justice and the U.S. Department of Education released a joint Dear Colleague Letter providing “significant guidance” on this topic. Title IX sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity. This clarifies that transgender students will not just be explicitly protected from physical or sexual abuse under Title IX, but from all forms of discrimination in education. The District’s Non-Discrimination Policy 10.10 and Anti-Bullying Policy 10.20 expressly prohibit discrimination and harassment based on gender identity and gender expression. Therefore, the following guidelines should be used to facilitate the accommodation of a transgender student in accordance with established Duval County policies.

A. NAMES AND GENDER PRONOUNS

Depending on the plan that is developed, a transgender student should be addressed by a name and gender pronoun corresponding to their consistently-asserted gender identity. School staff/officials with a legitimate educational interest in this information should be informed of a transgender student’s affirmed name and gender pronoun.

B. OFFICIAL DOCUMENTS

Public school students have privacy rights provided by the Family Educational Rights and Privacy Act (FERPA), which provides, among other matters, that education records and personally identifiable information set forth in them are confidential against release except under certain situations. *The U.S. Department of Education states that the gender marker in a student's official record should reflect the gender identity of the student regardless of what appears on the birth certificate.* While Florida law provides a process for people to seek a legal name change, there may be extenuating circumstances that make a legal name change desired. Parents/guardians, or students who are age 18 or older, also have the right to seek amendment to the school records under FERPA if their records are deemed "inaccurate, misleading, or in violation of the student's privacy". If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.

The District modifies a student's official records upon receipt of a court order reflecting a legal change in name and/or gender. If a student requests official modification of his/her education records, please contact the District's School Counseling Department at (904) 390-2090 and the Office of Equity and Inclusion/Professional Standards at (904) 390-2181 for further review of compliance with FERPA. However, the absence of official court documentation does not preclude a transgender student being addressed by his/her preferred name and pronoun (by way of example, students are referred to by nicknames), since legal modification is typically unavailable to minors. Student records may be noted accordingly. Please note that there is no law that requires teachers to call students by their legal name. These guidelines recommend referring to a transgender student by the name and gender pronoun that makes the student feel safe and comfortable.

Please note that a student's ID card is not considered an official student record and can be changed to the student's affirmed name when requested. Reasonable and good-faith efforts should be made with regard to these requests in order to promote consistency among teachers, substitute teachers, school administrators, and other school staff. Class and team rosters, yearbooks, school newspapers and newsletters are also considered unofficial student records and can be changed upon request.

C. DRESS CODES

Transgender students may wear clothing in accordance with their consistently asserted gender identity. As noted above, students have First Amendment rights; thus the dress code must be equally enforced, and clothing is prohibited if it causes a substantial disruption that is objectively provable to other people.

D. RESTROOMS

School administrator(s) should meet with the student to develop a plan. Transgender students shall not be forced to use the restroom corresponding to their biological sex. Contact the District's Office of Equity and Inclusion for further information to develop a plan that best meets the needs and privacy concerns of everyone involved.

E. LOCKER ROOMS

School administrator(s) should meet with the student to develop a plan. Contact the District's Office of Equity and Inclusion for further information to develop a plan that best meets the needs and privacy concerns of everyone involved. In reference to addressing privacy concerns, and based on availability, such accommodations could include, but are not limited to, use of a private area in the locker room (i.e., a bathroom stall with a door, an area separated by a curtain, a slightly modified schedule, or the use of a family change room). In fact, the establishment of privacy areas could be used for the benefit of *any* student desiring privacy. Note that the Office of Civil Rights takes a strong position regarding transgender students being forced to use the locker room corresponding to their biological sex.

F. ATHLETICS

In 2013-2014, the administrative policies of the Florida High School Athletic Association (FHSAA) were updated to include policy about gender identity participation. The policy states all eligible students should have the opportunity to participate in interscholastic athletics in a manner consistent with their gender identity and expression, irrespective of the gender listed on a student's birth certificate and/or records. The policy further states should any situation arise regarding a student's request to participate in a gender-segregated athletic event consistent with their gender identity and expression, a student may seek review of her or his eligibility for participation through procedures explained in the Florida High School Athletic Association website at www.fhsaa.org, Administrative Policies section, policy 4.3.

Transgender students shall be permitted to participate in physical education classes and intramural sports in accordance with their consistently asserted gender identity. Furthermore, unless expressly precluded by state interscholastic association policies, students shall be permitted to participate in interscholastic athletics in accordance with their consistently asserted gender identity.¹⁰

G. OVERNIGHT FIELD TRIPS

A transgender student's comfort level with sleeping arrangements will largely dictate the manner in which related issues are addressed. This should be handled delicately, respectfully, and on a case-by-case basis with assistance from the Office of Equity and Inclusion/Professional Standards.

H. GENDER SEGREGATION IN OTHER AREAS

As a general rule, in any circumstance where students are separated into male/female groups for school activities, transgender student shall be permitted to participate in accordance with their consistently asserted gender identity.

In general, efforts should be made to ensure transgender students are able to use facilities and participate in activities that are aligned with their consistently-asserted gender identity.

¹⁰ If you have a transgender athlete in your school whose presence on a team may conflict with state or national association guidelines, then, please contact the Office of Equity and Inclusion at 390-2181, for the most up-to-date information.

VI. ANTICIPATING PARENTAL CONCERNS: Questions and Answers

Concerned parents should be reassured that discussions of LGBTQ issues are not about sex; rather they are about respecting the diverse people who make up our community. Teaching acceptance and an awareness of diverse families can be accomplished in age-appropriate ways. Parents in your community may have concerns about the discussion of sexual orientation and/or gender identity in a school setting. Below are sample questions and suggested answers.

Q: Why are we spending time on LGBTQ topics and how does this impact schools?

A: A common form of harassment at schools is targeting students who are perceived to be LGBTQ. This harassment can lead to physical violence, which can cause permanent bodily damage; and/or social exclusion, which can cause permanent emotional damage. By preemptively addressing anti-gay bias, we create safe schools for all students, and teach respect for the diversity of the community at large.

Q: How does this apply to us? There are no openly gay kids at our school.

A: Just because parents and staff may not know of any LGBTQ students, it does not mean they are not in the classrooms, or that students do not have LGBTQ caregivers or relatives at home. School sites must be safe and accessible for *all* students, as well as LGBTQ parents, caregivers, family member and staff.

Q: Aren't our children too young to begin a discussion of LGBTQ issues?

A: By addressing LGBTQ issues in school, we are not talking about sex with your children – we are talking about family, identity, and respect for others. In today's world, our children are exposed to LGBTQ issues. Children see marriage equality being discussed on national news broadcasts, and they watch TV and movies that discuss, satirize, and ridicule LGBTQ people. Our obligation as educators is to confront stereotypes and address inappropriate language to make schools safe and accessible for all students and families. These discussions are not about sex or sexual activity or body parts, but are about respect for differences.

Q: What if the parents at our school aren't ready to be confronted with LGBTQ topics?

A: Parents have the right to expect that their student receives a free appropriate public education; however, it is the District's primary responsibility to support the health, safety and welfare of all students. The District's Non-Discrimination Policy 10.10 and Anti-Bullying Policy 10.20, are based upon state and federal laws, which expressly prohibit the discrimination and harassment of students and staff on the basis of sexual orientation, gender identity, and gender expression.

Q: What about the religious beliefs of our families?

A: Our students and their families are entitled to their personal religious beliefs. The focus of the Guide is directed toward the outward conduct of our students and staff – fostering mutual respect in order to make our schools a safe place for all who enter.

Q: Aren't our students too young to know about their sexual orientation?

A: Children come to an awareness of their sexual orientation at different stages, and this Guide is designed to consider age-appropriate stages.

Q: There are few LGBTQ students and many other student issues; why focus on this?

A: Insults and slurs about LGBTQ persons – or those who are perceived to be – are common; harassment cannot be tolerated on any level. LGBTQ students come from all

cultural, racial, and socio-economic backgrounds. These young people are more likely to attempt suicide than their straight-identifying counterparts, and are more likely to be threatened or injured at school. This issue concerns not only LGBTQ youth: straight-identifying youth are also impacted by anti-LGBTQ aggression because it is pervasive. When one subgroup of the school community feels threatened, the entire school culture is adversely affected. It is important to all students to make the District a model of mutual respect and diversity.

[Appendices follow on next page]

APPENDIX 1

Definitions

Ally: An ally in this context is a straight-identifying person who chooses to align him-or herself with the LGBTQ community. This is the “A” sometimes included in the broader umbrella acronym LGBTQIA.

Androgynous: Having both female and male characteristics – neither distinguishably masculine nor feminine, as in dress, appearance, or behavior.

Asexual: The sexual orientation of a person who does not experience romantic or physical feelings toward any person.

Biological sex: A person’s physical anatomy/genitalia.

Bisexual: The sexual orientation of a person who is physically and emotionally attracted to both males and females.

Cisgender: Persons whose gender identify aligns with the sex they were assigned at birth.

Cross-dressing: Refers to the act of wearing clothing and other accoutrements commonly associated with the opposite sex, making it difficult to distinguish between the male/female genders.

Gay: (for grades K-2): A woman who has romantic feelings for another woman; or a man who has romantic feelings for another man.

Gay: (for grades 3-12): A term that can apply to either men or women who are physically and emotionally attracted to persons of the same sex. Although “gay” can refer to both men and women, an alternative term for gay women is “lesbian.”

Gender: Unlike a person’s “biological sex” which is an anatomical term, “gender” is a social construct specifying the behaviorally and culturally prescribed characteristics men and women are traditionally expected to embody. Gender is now understood to have several components, including sexual orientation, gender identity, gender expression, and gender role.

Gender Assigned at Birth: The determination of the infant’s sex at birth.

Gender Binary: The notions that there exists only two genders, each solidly fixed, biologically-based and attached to various expectations for behavior, appearance and feelings. The gender system, while predominant in most cultures, is not the only modes of gender that exists; more nuanced, non-binary understandings of gender have existed throughout history and across cultures.

Gender-Expansive: Conveys a wider, more flexible range of gender identity and/or expression than typically associated with the binary gender system. A person who has gender characteristics and/or behaviors that do not conform to traditional or societal gender expectations; for example, “girly” boys and “masculine” girls; and those perceived as androgynous. Other terms used have been gender nonconforming or gender variant. Teachers have recently reported seeing an increase in gender-nonconforming behaviors at the elementary and middle school levels.

Gender Expression: A person's physical characteristics, behaviors, and presentation traditionally linked to either masculinity or femininity, such as: appearance, dress, mannerisms, speech patterns and social interactions.

Gender Fluid: Gender identity which refers to a gender which varies over time.

Gender Identity: Refers to a person's internal, deeply felt sense of being male or female, boy or girl, or other (for example, a blending of the two). Everyone has a gender identity, even if it does not always correspond with the person's biological sex.

Genderqueer: Blurring the lines around gender identity and sexual orientation, genderqueer individuals typically reject notions of static categories of gender and embrace a fluidity of gender identity and often, though not always, sexual orientation.

Gender Role: The social expectations of how a person should act, think, and/or feel based upon one's biological sex. This definition includes traditional and stereotypical roles, characteristics, mannerisms and behaviors associated with societal norms of what is male and what is female. These expectations are often stereotypical, such as "Boys like blue and girls like pink."

Heteronormative: The belief system that heterosexuality is the norm; the assumption that heterosexuality is universal and anything other than heterosexuality is unnatural.

Heterosexual: The sexual orientation of a person who is emotionally and sexually attracted to a member of the opposite sex. Often referred to as "straight."

Heterosexism: An overt or tacit bias against homosexuality, rooted in the belief that heterosexuality is superior or the norm.

Homophobia: A fear of or aversion to lesbian, gay or bisexual people. May also refer to a fear of or aversion to transgender people, as an alternative to the lesser-used "transphobia" (see "transphobia" below).

Homosexual: The sexual orientation of a person who is emotionally and sexually attracted to member of their own gender. This is a somewhat outdated term originating in the medical and psychological communities. Currently, many LGBTQ persons prefer the term "lesbian" or "gay."

Intersex: An intersex person has reproductive or sexual anatomy that does not correspond to the typical notions of "male" or "female." Previous generations might have referred to an intersex person as a "hermaphrodite." This is the "I" that is sometimes included in the broader umbrella acronym "LGBTQIA."

Lesbian: (for grades K-2): A woman who has romantic feelings for another woman.

Lesbian: (for grades 3-12): A term used to describe a woman who is emotionally and physically attracted to another woman.

LGBTQ: A frequently used acronym that stands for Lesbian, Gay, Bisexual, Transgender, and Questioning.

"Out" or "Out of the closet": A term used to refer to a person whose LGBTQ status is, to some degree, public. Note: It is not always the LGBTQ person who makes this information public.

Sometimes it is made public without the LGBTQ person's knowledge and/or consent. This is called "outing" someone. The act of "outing" an individual can create an at-risk situation.

Queer: An umbrella term used to describe a sexual orientation, gender identity or gender expression that does not conform to dominant societal norms. While "queer" is used as a neutral or even a positive term among many LGBTQ people today, some consider it derogatory as historically it has been used negatively.

Questioning: A person who is uncertain of his/her sexual orientation and/or gender orientation/identity.

Sexual Orientation: A person's sexual identity in relation to the gender to which they are attracted.

Transgender: (Grades K-5): When a person feels as if he or she has been born into the wrong body. For example, a boy who feels like he is a boy inside but has a girl's body or a girl who feels like she is a girl inside but has a boy's body.

Transgender: (Grades 6-12): This term describes a person whose gender identity does not match his or her physical anatomy (for example, a girl who feels trapped in a boy's body). Some transgender people hormonally and/or surgically change their bodies to more fully match their gender identity. Note: There are other meanings for transgender.

Transition: The process by which a transgender student begins to outwardly express him-or herself as the gender with which he or she identifies. This could mean beginning to wear clothes typically associated with the other gender, or asking to be called by a different name or gender pronoun.

Transphobia: A fear or aversion to transgender people.

APPENDIX 2
May 13, 2016 Dear Colleague Letter

May 13, 2016

Dear Colleague:

Schools across the country strive to create and sustain inclusive, supportive, safe, and nondiscriminatory communities for all students. In recent years, we have received an increasing number of questions from parents, teachers, principals, and school superintendents about civil rights protections for transgender students. Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations prohibit sex discrimination in educational programs and activities operated by recipients of Federal financial assistance.¹ This prohibition encompasses discrimination based on a student's gender identity, including discrimination based on a student's transgender status. This letter summarizes a school's Title IX obligations regarding transgender students and explains how the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) evaluate a school's compliance with these obligations.

ED and DOJ (the Departments) have determined that this letter is *significant guidance*.² This guidance does not add requirements to applicable law, but provides information and examples to inform recipients about how the Departments evaluate whether covered entities are complying with their legal obligations. If you have questions or are interested in commenting on this guidance, please contact ED at ocr@ed.gov or 800-421-3481 (TDD 800-877-8339); or DOJ at education@usdoj.gov or 877-292-3804 (TTY: 800-514-0383).

Accompanying this letter is a separate document from ED's Office of Elementary and Secondary Education, *Examples of Policies and Emerging Practices for Supporting Transgender Students*. The examples in that document are taken from policies that school districts, state education agencies, and high school athletics associations around the country have adopted to help ensure that transgender students enjoy a supportive and nondiscriminatory school environment. Schools are encouraged to consult that document for practical ways to meet Title IX's requirements.³

Terminology

Gender identity refers to an individual's internal sense of gender. A person's gender identity may be different from or the same as the person's sex assigned at birth.

Sex assigned at birth refers to the sex designation recorded on an infant's birth certificate should such a record be provided at birth.

Transgender describes those individuals whose gender identity is different from the sex they were assigned at birth. A *transgender male* is someone who identifies as male but was assigned the sex of female at birth; a *transgender female* is someone who identifies as female but was assigned the sex of male at birth.

Gender transition refers to the process in which transgender individuals begin asserting the sex that corresponds to their gender identity instead of the sex they were assigned at birth. During gender transition, individuals begin to live and identify as the sex consistent with their gender identity and may dress differently, adopt a new name, and use pronouns consistent with their gender identity.

Transgender individuals may undergo gender transition at any stage of their lives, and gender transition can happen swiftly or over a long duration of time.

Compliance with Title IX

As a condition of receiving Federal funds, a school agrees that it will not exclude, separate, deny benefits to, or otherwise treat differently on the basis of sex any person in its educational programs or activities unless expressly authorized to do so under Title IX or its implementing regulations.⁴ The Departments treat a student's gender identity as the student's sex for purposes of Title IX and its implementing regulations. This means that a school must not treat a transgender student differently from the way it treats other students of the same gender identity. The Departments' interpretation is consistent with courts' and other agencies' interpretations of Federal laws prohibiting sex discrimination.⁵

The Departments interpret Title IX to require that when a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity. Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity.⁶ Because transgender students often are unable to obtain identification documents that reflect their gender identity (*e.g.*, due to restrictions imposed by state or local law in their place of birth or residence),⁷ requiring students to produce such identification documents in order to treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an educational program or activity.

A school's Title IX obligation to ensure nondiscrimination on the basis of sex requires schools to provide transgender students equal access to educational programs and activities even in circumstances in which other students, parents, or community members raise objections or concerns. As is consistently recognized in civil rights cases, the desire to accommodate others' discomfort cannot justify a policy that singles out and disadvantages a particular class of students.⁸

1. *Safe and Nondiscriminatory Environment*

Schools have a responsibility to provide a safe and nondiscriminatory environment for all students, including transgender students. Harassment that targets a student based on gender identity, transgender status, or gender transition is harassment based on sex, and the Departments enforce Title IX accordingly.⁹ If sex-based harassment creates a hostile environment, the school must take prompt and effective steps to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. A school's failure to treat students consistent with their gender identity may create or contribute to a hostile environment in violation of Title IX. For a more detailed discussion of Title IX requirements related to sex-based harassment, see guidance documents from ED's Office for Civil Rights (OCR) that are specific to this topic.¹⁰

2. *Identification Documents, Names, and Pronouns*

Under Title IX, a school must treat students consistent with their gender identity even if their education records or identification documents indicate a different sex. The Departments have resolved Title IX investigations with agreements committing that school staff and contractors will use pronouns and names consistent with a transgender student's gender identity.¹¹

3. Sex-Segregated Activities and Facilities

Title IX's implementing regulations permit a school to provide sex-segregated restrooms, locker rooms, shower facilities, housing, and athletic teams, as well as single-sex classes under certain circumstances.¹² When a school provides sex-segregated activities and facilities, transgender students must be allowed to participate in such activities and access such facilities consistent with their gender identity.¹³

Restrooms and Locker Rooms.

A school may provide separate facilities on the basis of sex, but must allow transgender students access to such facilities consistent with their gender identity.¹⁴ A school may not require transgender students to use facilities inconsistent with their gender identity or to use individual-user facilities when other students are not required to do so. A school may, however, make individual-user options available to all students who voluntarily seek additional privacy.¹⁵

Athletics.

Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport.¹⁶ A school may not, however, adopt or adhere to requirements that rely on overly broad generalizations or stereotypes about the differences between transgender students and other students of the same sex (*i.e.*, the same gender identity) or others' discomfort with transgender students.¹⁷ Title IX does not prohibit age-appropriate, tailored requirements based on sound, current, and research-based medical knowledge about the impact of the students' participation on the competitive fairness or physical safety of the sport.¹⁸

Single-Sex Classes.

Although separating students by sex in classes and activities is generally prohibited, non-vocational elementary and secondary schools may offer non-vocational single-sex classes and extracurricular activities under certain circumstances.¹⁹ When offering such classes and activities, a school must allow transgender students to participate consistent with their gender identity.

Single-Sex Schools.

Title IX does not apply to the admissions policies of certain educational institutions, including non-vocational elementary and secondary schools, and private undergraduate colleges.²⁰ Those schools are therefore permitted under Title IX to set their own sex-based admissions policies. Nothing in Title IX prohibits a private undergraduate women's college from admitting transgender women if it so chooses.

Social Fraternities and Sororities.

Title IX does not apply to the membership practices of social fraternities and sororities.²¹ Those organizations are therefore permitted under Title IX to set their own policies regarding the sex, including gender identity, of their members. Nothing in Title IX prohibits a fraternity from admitting transgender men or a sorority from admitting transgender women if it so chooses.

Housing and Overnight Accommodations.

Title IX allows a school to provide separate housing on the basis of sex.²² But a school must allow transgender students to access housing consistent with their gender identity and may not require transgender students to stay in single-occupancy accommodations or to disclose personal information when not required of other students. Nothing in Title IX prohibits a school from honoring a student's voluntary request for single-occupancy accommodations if it so chooses.²³

Other Sex-Specific Activities and Rules. Unless expressly authorized by Title IX or its implementing regulations, a school may not segregate or otherwise distinguish students on the basis of their sex, including gender identity, in any school activities or the application of any school rule. Likewise, a school may not discipline students or exclude them from participating in activities for appearing or behaving in a manner that is consistent with their gender identity or that does not conform to stereotypical notions of masculinity or femininity (*e.g.*, in yearbook photographs, at school dances, or at graduation ceremonies).²⁴

4. Privacy and Education Records

Protecting transgender students' privacy is critical to ensuring they are treated consistent with their gender identity. The Departments may find a Title IX violation when a school limits students' educational rights or opportunities by failing to take reasonable steps to protect students' privacy related to their transgender status, including their birth name or sex assigned at birth.²⁵ Nonconsensual disclosure of personally identifiable information (PII), such as a student's birth name or sex assigned at birth, could be harmful to or invade the privacy of transgender students and may also violate the Family Educational Rights and Privacy Act (FERPA).²⁶ A school may maintain records with this information, but such records should be kept confidential.

Disclosure of Personally Identifiable Information from Education Records. FERPA generally prevents the nonconsensual disclosure of PII from a student's education records; one exception is that records may be disclosed to individual school personnel who have been determined to have a legitimate educational interest in the information.²⁷ Even when a student has disclosed the student's transgender status to some members of the school community, schools may not rely on this FERPA exception to disclose PII from education records to other school personnel who do not have a legitimate educational interest in the information. Inappropriately disclosing (or requiring students or their parents to disclose) PII from education records to the school community may violate FERPA and interfere with transgender students' right under Title IX to be treated consistent with their gender identity.

Disclosure of Directory Information. Under FERPA's implementing regulations, a school may disclose appropriately designated directory information from a student's education record if disclosure would not generally be considered harmful or an invasion of privacy.²⁸ Directory information may include a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance.²⁹ School officials may not designate students' sex, including transgender status, as directory information because doing so could be harmful or an invasion of privacy.³⁰ A school also must allow eligible students (*i.e.*, students who have reached 18 years of age or are attending a postsecondary institution) or parents, as appropriate, a reasonable amount of time to request that the school not disclose a student's directory information.³¹

Amendment or Correction of Education Records. A school may receive requests to correct a student's education records to make them consistent with the student's gender identity. Updating a transgender student's education records to reflect the student's gender identity and new name will help protect privacy and ensure personnel consistently use appropriate names and pronouns.

Under FERPA, a school must consider the request of an eligible student or parent to amend information in the student's education records that is inaccurate, misleading, or in violation of the student's privacy rights.³² If the school does not amend the record, it must inform the requestor of its decision and of the right to a hearing. If, after the hearing, the school does not amend the record, it must inform the requestor of the right to insert a statement in the record with the

requestor's comments on the contested information, a statement that the requestor disagrees with the hearing decision, or both. That statement must be disclosed whenever the record to which the statement relates is disclosed.³³

Under Title IX, a school must respond to a request to amend information related to a student's transgender status consistent with its general practices for amending other students' records.³⁴ If a student or parent complains about the school's handling of such a request, the school must promptly and equitably resolve the complaint under the school's Title IX grievance procedures.³⁵

We appreciate the work that many schools, state agencies, and other organizations have undertaken to make educational programs and activities welcoming, safe, and inclusive for all students.

Sincerely,

/s/ Catherine E. Lhamon Assistant Secretary for Civil Rights U.S. Department of Education
/s/ Vanita Gupta Principal Deputy Assistant Attorney General for Civil Rights U.S. Department of Justice

1. 20 U.S.C. §§ 1681–1688; 34 C.F.R. Pt. 106; 28 C.F.R. Pt. 54. In this letter, the term *schools* refers to recipients of Federal financial assistance at all educational levels, including school districts, colleges, and universities. An educational institution that is controlled by a religious organization is exempt from Title IX to the extent that compliance would not be consistent with the religious tenets of such organization. 20 U.S.C. § 1681(a)(3); 34 C.F.R. §106.12(a).

2. Office of Management and Budget, Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), www.whitehouse.gov/sites/default/files/omb/fedreg/2007/012507_good_guidance.pdf.

3. ED, *Examples of Policies and Emerging Practices for Supporting Transgender Students* (May 13, 2016), www.ed.gov/oese/osh/emergingpractices.pdf. OCR also posts many of its resolution agreements in cases involving transgender students online at www.ed.gov/ocr/lgbt.html. While these agreements address fact-specific cases, and therefore do not state general policy, they identify examples of ways OCR and recipients have resolved some issues addressed in this guidance.

4. 34 C.F.R. §§ 106.4, 106.31(a). For simplicity, this letter cites only to ED's Title IX regulations. DOJ has also promulgated Title IX regulations. See 28 C.F.R. Pt. 54. For purposes of how the Title IX regulations at issue in this guidance apply to transgender individuals, DOJ interprets its regulations similarly to ED. State and local rules cannot limit or override the requirements of Federal laws. See 34 C.F.R. § 106.6(b).

5. See, e.g., *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Oncale v. Sundowner Offshore Servs. Inc.*, 523 U.S. 75, 79 (1998); *G.G. v. Gloucester Cnty. Sch. Bd.*, No. 15-2056, 2016 WL 1567467, at *8 (4th Cir. Apr. 19, 2016); *Glenn v. Brumby*, 663 F.3d 1312, 1317 (11th Cir. 2011); *Smith v. City of Salem*, 378 F.3d 566, 572-75 (6th Cir. 2004); *Rosa v. Park W. Bank & Trust Co.*, 214 F.3d 213, 215–16 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187, 1201–02 (9th Cir. 2000); *Schroer v. Billington*, 577 F. Supp. 2d 293, 306-08 (D.D.C. 2008); *Macy v. Dep't of Justice*, Appeal No. 012012082 (U.S. Equal Emp't Opportunity Comm'n Apr. 20, 2012). See also U.S. Dep't of Labor (USDOL), Training and Employment Guidance Letter No. 37-14, *Update on Complying with Nondiscrimination Requirements: Discrimination Based on Gender Identity, Gender Expression and Sex Stereotyping are Prohibited Forms of Sex Discrimination in the Workforce Development System* (2015), wdr.doleta.gov/directives/attach/TEGL/TEGL_37-14.pdf; USDOL, Job Corps, Directive: Job Corps Program Instruction Notice No. 14-31, *Ensuring Equal Access for Transgender Applicants and Students to the Job Corps Program* (May 1, 2015), https://supportservices.jobcorps.gov/Program%20Instruction%20Notices/pi_14_31.pdf; DOJ, Memorandum from the Attorney General, *Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964* (2014), www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/18/title_vii_memo.pdf; USDOL, Office of Federal Contract Compliance Programs, Directive 2014-02, *Gender Identity and Sex Discrimination* (2014), www.dol.gov/ofccp/regs/compliance/directives/dir2014_02.html.

6. See *Lusardi v. Dep't of the Army*, Appeal No. 0120133395 at 9 (U.S. Equal Emp't Opportunity Comm'n Apr. 1, 2015) (“An agency may not condition access to facilities—or to other terms, conditions, or privileges of employment—on the completion of certain medical steps that the agency itself has unilaterally determined will somehow prove the bona fides of the individual's gender identity.”).

7. See *G.G.*, 2016 WL 1567467, at *1 n.1 (noting that medical authorities “do not permit sex reassignment surgery for persons who are under the legal age of majority”).

8. 34 C.F.R. § 106.31(b)(4); see *G.G.*, 2016 WL 1567467, at *8 & n.10 (affirming that individuals have legitimate and important privacy interests and noting that these interests do not inherently conflict with nondiscrimination principles); *Cruzan v. Special Sch. Dist. No. 1*, 294 F.3d 981, 984 (8th Cir. 2002) (rejecting claim that allowing a transgender woman “merely [to be] present in the women's faculty restroom” created a hostile environment); *Glenn*, 663 F.3d at 1321 (defendant's proffered

justification that “other women might object to [the plaintiff]’s restroom use” was “wholly irrelevant”). *See also* *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984) (“Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 448 (1985) (recognizing that “mere negative attitudes, or fear . . . are not permissible bases for” government action).

9. *See, e.g.*, Resolution Agreement, *In re Downey Unified Sch. Dist.*, CA, OCR Case No. 09-12-1095, (Oct. 8, 2014), www.ed.gov/documents/press-releases/downey-school-district-agreement.pdf (agreement to address harassment of transgender student, including allegations that peers continued to call her by her former name, shared pictures of her prior to her transition, and frequently asked questions about her anatomy and sexuality); Consent Decree, *Doe v. Anoka-Hennepin Sch. Dist. No. 11, MN* (D. Minn. Mar. 1, 2012),

www.ed.gov/ocr/docs/investigations/05115901-d.pdf (consent decree to address sex-based harassment, including based on nonconformity with gender stereotypes); Resolution Agreement, *In re Tehachapi Unified Sch. Dist.*, CA, OCR Case No. 09-11-1031 (June 30, 2011), www.ed.gov/ocr/docs/investigations/09111031-b.pdf (agreement to address sexual and gender-based harassment, including harassment based on nonconformity with gender stereotypes). *See also* *Lusardi*, Appeal No. 0120133395, at *15 (“Persistent failure to use the employee’s correct name and pronoun may constitute unlawful, sex-based harassment if such conduct is either severe or pervasive enough to create a hostile work environment”).

10. *See, e.g.*, OCR, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (2001), www.ed.gov/ocr/docs/shguide.pdf; OCR, *Dear Colleague Letter: Harassment and Bullying* (Oct. 26, 2010), www.ed.gov/ocr/letters/colleague-201010.pdf; OCR, *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011), www.ed.gov/ocr/letters/colleague-201104.pdf; OCR, *Questions and Answers on Title IX and Sexual Violence* (Apr. 29, 2014), www.ed.gov/ocr/docs/qa-201404-title-ix.pdf.

11. *See, e.g.*, Resolution Agreement, *In re Cent. Piedmont Cmty. Coll.*, NC, OCR Case No. 11-14-2265 (Aug. 13, 2015), www.ed.gov/ocr/docs/investigations/more/11142265-b.pdf (agreement to use a transgender student’s preferred name and gender and change the student’s official record to reflect a name change).

12. 34 C.F.R. §§ 106.32, 106.33, 106.34, 106.41(b).

13. *See* 34 C.F.R. § 106.31.

14. 34 C.F.R. § 106.33.

15. *See, e.g.*, Resolution Agreement, *In re Township High Sch. Dist. 211, IL*, OCR Case No. 05-14-1055 (Dec. 2, 2015), www.ed.gov/ocr/docs/investigations/more/05141055-b.pdf (agreement to provide any student who requests additional privacy “access to a reasonable alternative, such as assignment of a student locker in near proximity to the office of a teacher or coach; use of another private area (such as a restroom stall) within the public area; use of a nearby private area (such as a single-use facility); or a separate schedule of use.”).

16. 34 C.F.R. § 106.41(b). Nothing in Title IX prohibits schools from offering coeducational athletic opportunities.

17. 34 C.F.R. § 106.6(b), (c). An interscholastic athletic association is subject to Title IX if (1) the association receives Federal financial assistance or (2) its members are recipients of Federal financial assistance and have ceded controlling authority over portions of their athletic program to the association. Where an athletic association is covered by Title IX, a school’s obligations regarding transgender athletes apply with equal force to the association.

18. The National Collegiate Athletic Association (NCAA), for example, reported that in developing its policy for participation by transgender students in college athletics, it consulted with medical experts, athletics officials, affected students, and a consensus report entitled *On the Team: Equal Opportunity for Transgender Student Athletes* (2010) by Dr. Pat Griffin & Helen J. Carroll (*On the Team*),

[https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B\(2\).pdf](https://www.ncaa.org/sites/default/files/NCLR_TransStudentAthlete%2B(2).pdf). *See* NCAA Office of Inclusion, *NCAA Inclusion of Transgender Student-Athletes 2*, 30-31 (2011),

https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (citing *On the Team*). The *On the Team* report noted that policies that may be appropriate at the college level may “be unfair and too complicated for [the high school] level of competition.” *On the Team* at 26. After engaging in similar processes, some state interscholastic athletics associations have adopted policies for participation by transgender students in high school athletics that they determined were age-appropriate.

19. 34 C.F.R. § 106.34(a), (b). Schools may also separate students by sex in physical education classes during participation in contact sports. *Id.* § 106.34(a)(1).

20. 20 U.S.C. § 1681(a)(1); 34 C.F.R. § 106.15(d); 34 C.F.R. § 106.34(c) (a recipient may offer a single-sex public non-vocational elementary and secondary school so long as it provides students of the excluded sex a “substantially equal single-sex school or coeducational school”).

21. 20 U.S.C. § 1681(a)(6)(A); 34 C.F.R. § 106.14(a).

22. 20 U.S.C. § 1686; 34 C.F.R. § 106.32.

23 *See, e.g.*, Resolution Agreement, *In re Arcadia Unified. Sch. Dist.*, CA, OCR Case No. 09-12-1020, DOJ Case No. 169-12C-70, (July 24, 2013), www.justice.gov/sites/default/files/crt/legacy/2013/07/26/arcadiaagree.pdf (agreement to provide access to single-sex overnight events consistent with students’ gender identity, but allowing students to request access to private facilities).

24. *See* 34 C.F.R. §§ 106.31(a), 106.31(b)(4). *See also, In re Downey Unified Sch. Dist.*, CA, *supra* n. 9; *In re Cent. Piedmont Cmty. Coll.*, NC, *supra* n. 11.

25. 34 C.F.R. § 106.31(b)(7).

26. 20 U.S.C. § 1232g; 34 C.F.R. Part 99. FERPA is administered by ED’s Family Policy Compliance Office (FPCO). Additional information about FERPA and FPCO is available at www.ed.gov/fpc.

27. 20 U.S.C. § 1232g(b)(1)(A); 34 C.F.R. § 99.31(a)(1).

28. 34 C.F.R. §§ 99.3, 99.31(a)(11), 99.37.

29. 20 U.S.C. § 1232g(a)(5)(A); 34 C.F.R. § 99.3.

30. Letter from FPCO to Institutions of Postsecondary Education 3 (Sept. 2009), www.ed.gov/policy/gen/guid/fpcoc/doc/censuslettertohighered091609.pdf.
31. 20 U.S.C. § 1232g(a)(5)(B); 34 C.F.R. §§ 99.3. 99.37(a)(3).
32. 34 C.F.R. § 99.20.
33. 34 C.F.R. §§ 99.20-99.22.
34. See 34 C.F.R. § 106.31(b)(4).
35. 34 C.F.R. § 106.8(b).

APPENDIX 3 **LGBTQ Resources**

Please make your guidance and school staff aware of the following resources.

Crisis Hotlines

United Way of Northeast Florida 2-1-1

2-1-1 or 904-632-0600

Provides 24-hour comprehensive Helpline and support services for individuals in our community seeking crises intervention assistance and/or information and referrals to health and human services in Duval County.

Nefl211.org

The Trevor Project

1-866-488-7386

24/7 crisis intervention and suicide prevention for LGBTQ youth

thetrevorproject.org

Youth Runaway Hotline

1-800-RUNAWAY (1-800-786-2929)

Keeps runaway, homeless and at risk youth safe and off the streets

<http://www.1800runaway.org>

Florida Department of Children and Families Abuse Hotline

Abuse Hotline: 1-800-962-2873

District Resources

The District's Office of Equity and Inclusion – (904) 390-2181

This department is charged with the responsibility of monitoring, coordinating, and recommending action aimed toward the District's policy of equal opportunity in education and employment. The department also assures the district's compliance with Federal, State and District regulations pertaining to equal opportunity and equal access.

The District's Office of School Climate and Culture Support – (904) 390-2215

District specialists offer professional learning opportunities on the topic of bullying. This includes bullying, cyber-bullying, harassment and teen dating violence as defined by section 1006.147, Florida Statutes. Training topics include prevention, notification, jurisdiction, instruction, and counseling referrals. The Bullying Prevention Hotline phone number is (904) 390-2255 or text at 390Call@duvalschools.org. Reporting forms are at schools and on the District website.

The District's Wellness Department – (904) 390-2499

Represents an expansion of the traditional elements of school health – education, services and environment – to embrace a broader mission, one in which collaboration with community resources are fostered and everyone in the school shares the responsibility for promoting good health. Realizing this mission requires the mobilization of social, intellectual, physical and mental health needs of students. This contributes to the well-being of the school staff, and creates a healthful school environment for everyone. This department assists with training teachers, administrators and community members on bullying and safe and supportive environments.

Other Resources

American Civil Liberties Union of Florida (ACLU)

Investigates and/or litigates civil liberties matters concerning individual freedom and constitutional rights. Division devoted specifically to LGBTQ issues. www.aclufl.org

Equality Florida

Statewide agency dedicated to securing full equality for Florida's lesbian, gay, bisexual, and transgender (LGBT) residents. www.eqfl.org

Gay Lesbian Straight Education Network (GLSEN)

The leading national education organization focused on ensuring safety for all students. Provides resources, research, and model policies. www.GLSEN.org

Gay-Straight Alliance Network (GSA Network)

A youth leadership organization linking GSAs to one another and community resources through peer support, leadership development, and training. www.gsanetwork.org

Jacksonville Area Legal Aid (JALA)

JALA provides high quality free civil legal assistance to the economically disadvantaged in Duval County. www.Jaxlegalaid.org
904-356-8371

Office for Civil Rights, U.S. Department of Education

Regional office serving Florida; can be contacted in the event of a violation.
<http://2.ed.gov/about/offices/list/ocr/index.html>
404-974-9406

Parents and Friends of Lesbian and Gays (PFLAG)

Promotes the health and well-being of lesbian, gay, bisexual, and transgender individuals, as well as their family and friends, through support, education, and advocacy. www.pflagjax.org
904-737-3329

Florida Department of Health in Duval County

The mission of Florida Department of Health in Duval County is to protect, prevent and improve the health of all people in Duval County through integrated state, county, and community efforts. duval. www.Floridahealth.gov
(904) 253-1000

JASMYN

The mission is to support and empower LGBTQ young people by creating safe space, providing health and wholeness services, and offering youth development opportunities, while bringing people and resources together to promote equality and human rights.
Phone: (904) 389-3857
Gay Youth Information Line: (904) 389-0089
www.jasmyn@jasmyn.org

APPENDIX 4
Secretary Duncan's Key Policy Letter

June 14, 2011

Dear Colleagues:

Harassment and bullying are serious problems in our schools and lesbian, gay, bisexual, and transgender (LGBT) students are the targets of disproportionate shares of these problems. Thirty-two percent of students aged 12-18 experienced verbal or physical bullying during the 2007-2008 school year;¹ and, according to a recent survey, more than 90 percent of LGBT students in grades 6 through 12 reported being verbally harassed – almost half reported being physically harassed – during the 2008-2009 school year.² High levels of harassment and bullying correlate with poorer educational outcomes, lower future aspirations, frequent school absenteeism, and lower grade-point averages.³ Recent tragedies involving LGBT students and students perceived to be LGBT only underscore the need for safer schools.

Gay-straight alliances (GSAs) and similar student-initiated groups addressing LGBT issues can play an important role in promoting safer schools and creating more welcoming learning environments. Nationwide, students are forming these groups in part to combat bullying and harassment of LGBT students and to promote understanding and respect in the school community. Although the efforts of these groups focus primarily on the needs of LGBT students, students who have LGBT family member and friends, and student who are perceived to be LGBT, messages of respect, tolerance, and inclusion benefit all our students. By encouraging dialogue and providing supportive resources, these groups can help make schools safe and affirming environments for everyone.

But in spite of the positive effect these groups can have in schools, some such groups have been unlawfully excluded from school grounds, prevented from forming, or denied access to school resources. These same barriers have sometimes been used to target religious and other student groups, leading Congress to pass the Equal Access Act.

In 1984, Congress passed and President Ronald Reagan signed into law the Equal Access Act, requiring public secondary schools to provide equal access for extracurricular clubs. Rooted in principles of equal treatment and freedom of expression, the Act protects student-initiated groups of all types. As one of my predecessors, Secretary Richard W. Riley, pointed out in guidance concerning the Equal Access Act and religious clubs more than a decade ago, we “protect our own freedoms by respecting the freedom of others who differ from us.”⁴ By allowing students to discuss difficult issues openly and honestly, in a civil manner, our schools become forums for combating ignorance, bigotry, hatred, and discrimination.

The Act requires public secondary schools to treat all student-initiated groups equally, regardless of the religious, political, philosophical, or other subject matters discussed at their meetings. Its protections apply to groups that address issues relating to LGBT students and matters involving sexual orientation and gender identity, just as they apply to religious and other student groups.

Today, the U.S. Department of Education's General Counsel, Charles P. Rose, is issuing a letter of legal guidelines affirming the principles that prevent unlawful discrimination against any student-initiated groups. We intend for these guidelines to provide schools with the information and resources they need to help ensure that all students, including LGBT and gender nonconforming students, have a safe place to learn, meet, share experiences, and discuss matters that are important to them.

Although specific implementation of the Equal Access Act depends upon contextual circumstances, these guidelines reflect basic obligations imposed on public school officials by the Act and the First Amendment to the U.S. Constitution. The general rule, approved by the U.S. Supreme Court, is that a public high school that allows at least one noncurricular student group to meet on school grounds during non-instructional time (e.g., lunch, recess, or before or after school) may not deny similar access to other noncurricular student groups, regardless of the religious, political, philosophical, or other subject matters that the groups address.

I encourage every school district to make sure that its administrators, faculty members, staff, students, and parents are familiar with these principles in order to protect the rights of all students – regardless of region, political or philosophical views, sexual orientation, or gender identity. I also urge school districts to use the guidelines to develop or improve district policies. In doing so, school officials may find it helpful to explain to the school community that the Equal Access Act requires public schools to afford equal treatment to all noncurricular student organizations, including GSAs and other groups that focus on issues related to LGBT students, sexual orientation, or gender identity. Officials need not endorse any particular student organization, but federal law requires that they afford all student groups the same opportunities to form, to convene on school grounds, and to have access to the same resources available to other student groups.

The process of revising or developing an equal-access policy offers an opportunity for school officials to engage their community in an open dialogue on the equal treatment of all noncurricular student organizations. It is important to remember, therefore, that the Equal Access Act's requirements are a bare legal minimum. I invite and encourage you to go beyond what the law requires in order to increase students' sense of belong in the school and to help students, teachers, and parents recognize the core values behind our principles of free speech. As noted in our October 2010 Dear Colleague Letter and December 2010 guidance regarding anti-bullying policies, I applaud such policies as positive steps toward ensuring equal access to education for all students.

Thank you for your work on behalf of our nation's children.

Sincerely,

/s/

Arne Duncan

¹ Dinkes, R., Kemp, J., Baum, K. (2010). Indicators of School Crime and Safety: 2010. (NCES 2010-012/NCJ 228478). 42 National Center for Education Statistics: Washington, DC.

² Kosciw, J.G., Greytak, E.A., Diaz, E.M., and Bartkiewicz, M.J. (2010). The 2009 National School Climate Survey: The experiences of lesbian, gay, bisexual and transgender youth in our nation's schools, 26, New York: GLSEN.

³ GLSEN, at 46-8

⁴ U.S. Department of Education, "Secretary's Guidelines on Religious Expression in Public Schools," August 1995, <http://www2.ed.gov/Speeches/08-1995/religion.html>.